



April 24, 2023

Via ECF and E-mail

The Honorable Katherine Polk Failla
U.S. District Court Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

Re: *In re Tether and Bitfinex Crypto Asset Litigation*, 19-CV-09236 (KPF)

Dear Judge Failla:

Per Local Civil Rule 37.2 and Individual Rule 3.C, Plaintiffs seek a pre-motion conference on B/T Defendants' failure to fully comply with the Court's September 20, 2022 order ("September 20 Order") to produce trading records in response to Plaintiffs' Revised Document Request Nos. 23-25 ("Transaction RFPs"). *See* ECF No. 247 at 5. These records are "undoubtedly important" because they "go to one of Plaintiffs' core allegations: that the B/T Defendants engaged in cryptocommodities transactions using unbacked USDT, and that those transactions 'were strategically timed to inflate the market.'" ECF No. 247 at 4; *see also* ECF No. 240 at 1-2 (discussing relevance of the records). The parties met and conferred via correspondence but are at impasse.

B/T Defendants began producing trading records in October 2022, inconsistently labeled and generally without identifying information beyond account numbers. In November 2022, Plaintiffs requested, via interrogatories, all accounts and wallets owned or controlled by B/T Defendants and their officers and employees—a process B/T Defendants dragged out for months before answering (partially and incompletely) on April 5, 2023. *See* Ex. 1. In March 2023, Plaintiffs found a document in Defendant Philip Potter's production showing that a list of 66 account numbers

[REDACTED]

On March 23, 2023, Plaintiffs asked B/T Defendants to identify all records produced in response to the Transaction RFPs, *see* Ex. 4 (Ltr. L. King to E. Greenfield (March 23, 2023)), including accounts [REDACTED] identified in B/T Defendants' internal communications. *Id.* B/T Defendants did not do so, saying instead that they "plan[ned] to complete their production of transaction data in response to RFPs 23-25 by April 14." Ex. 5, at 6 (Email, N. Born to L. King (April 3, 2023)). Now purportedly complete, B/T Defendants' production is seriously deficient.

First, B/T Defendants did not produce records for at least eight internal accounts under their ownership or control: a Bitfinex reserve account ([REDACTED]), a Digfinex equity account ([REDACTED]), a Bitfinex-OTC account ([REDACTED]), a Tether account ([REDACTED]), and Philip Potter's accounts ([REDACTED]). *See* Ex. 6 (Ltr. L. King to E. Greenfield (April 5, 2023)); Ex. 7 (Ltr. L. King to E. Greenfield (April 17, 2023)). B/T Defendants provided wallet addresses for some of these accounts but no trading records—not even for the Tether account, which was [REDACTED]

_____ ¹ B/T Defendants also failed to produce records corresponding to many accounts on the _____, or to explain what records they withheld and why. *See* Exs. 5-6.

Second, B/T Defendants’ produced records for one of the most critical accounts—the Bitfinex-owned reserve account ([REDACTED])—with significant gaps. They show trades only from October to December 2017 plus one day in February 2020—even though documents show trading in that account at other times, e.g., Exs. 4 (Ltr. L. King to E. Greenfield (March 23, 2023)), 7 (Ltr. L. King to E. Greenfield (April 17, 2023)) ([REDACTED]); Ex. 9 ([REDACTED]).

The records for this account also fail to capture any trades involving USDT before 2019.

Third, only late last week, in a footnote in a letter to the Court, B/T Defendants revealed that they are withholding trading records of their officers and employees. *See* ECF No. 325 at 3 n.2. This violates the Court’s September 20 Order. The Transaction RFPs requested records for accounts belonging to the B/T Defendants, defined to include officers and employees, among others. *See* Ex. 10. In their general responses to Plaintiffs’ RFPs, B/T Defendants agreed to produce documents from “the named entity and its past and present employees, officers and directors.” *See* Ex. 11 at 2. Plaintiffs moved to compel compliance with the Transaction RFPs as written and, in opposing, B/T Defendants never contested that definition. The Court ordered B/T Defendants to produce documents in response to the Transaction RFPs without changing the definition. B/T Defendants have no basis to withhold these records.²

Discovery confirms

¹ Ex. 8 (discussing the Tether account (██████)).

2 B/T Defendants also tried to use the Court’s subsequent orders to end run the Court’s September 20 Order. Revised RFP No. 25 sought records of trades by B/T Defendants—or any entity that they control—on other exchanges. ECF 240-1 at 6–7. B/T Defendants said they did not know of any external transaction records other than documents Poloniex produced in response to Plaintiffs’ RFPs, Ex. 5 (Email, N. Born to L. King (April 14, 2023)), even though Poloniex’s production—unlike the Court’s September 20 Order—was limited to accounts of the named B/T Defendants by this Court’s order of March 1, 2023, ECF No. 310.

Respectfully submitted,

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